



**Bert Bell/Pete Rozelle NFL Player Retirement Plan**

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**NFL PLAYERS**  
ASSOCIATION

VIA REGISTERED/RETURN RECEIPT

December 2, 2015

Mr. Andre Royal  
P.O. Box 20545  
Tuscaloosa, AL 35402

**Certified Article Number**

7196 9008 9111 8866 2143

**SENDERS RECORD**

Re: **Appeal for Reclassification**  
**Final Decision on Review**

Dear Mr. Royal,

At its November 19, 2015 meeting, the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered your appeal from the Disability Initial Claims Committee's ("Committee") earlier decision to deny your request for reclassification of your total and permanent disability ("T&P") benefits from the Football Degenerative category to the Active Football category. We regret to inform you that the Retirement Board denied your appeal. This letter explains the Retirement Board's decision.

**Relevant Plan Provisions**

Section 5.10(e) of the current Plan indicates that a prior version of the Plan controls your request for reclassification and this appeal. Section 5.10(e) reads as follows:

"Any Player who was awarded a disability benefit prior to September 1, 2011 (including any Player whose application for a disability benefit was received by this Plan prior to September 1, 2011, that leads to an award of a benefit) will not be eligible for a benefit under the rules governing the award of disability benefits that go into effect on September 1, 2011, unless based on an impairment other than the one that originally qualified him for a disability benefit. Furthermore, **the rules in effect prior to September 1, 2011, will govern all appeals and reclassifications of disability benefits that were awarded prior to September 1, 2011** (including any Player whose application for a disability benefit was received by this Plan prior to September 1, 2011, that leads to an award of a benefit), except that the dispute resolution procedures of Section 8.3 will apply." (Emphasis added.)

The applicable Plan in effect prior to September 1, 2011 was the Plan as Amended and Restated as of April 1, 2009. Section 5.1 of that Plan provided that a Player would be

eligible for T&P benefits if he was "determined by the Retirement Board or the Disability Initial Claims Committee to be totally and permanently disabled as defined in Section 5.2...."

Section 5.2(a) stated that a Player "will be deemed to be totally and permanently disabled if the Retirement Board or the Disability Initial Claims Committee finds that he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit...."

Section 5.1 provided four categories of T&P benefits, and two are relevant here:

- (a) Active Football. The monthly total and permanent disability benefit will be no less than \$4,000 if the disability(ies) results from League football activities, arises while the Player is an Active Player, and causes the Player to be totally and permanently disabled "shortly after" the disability(ies) first arises.
- (c) Football Degenerative. The monthly total and permanent disability benefit will be no less than \$4,000 if the disability(ies) arises out of League football activities, and results in total and permanent disability before fifteen years after the end of the Player's last Credited Season.

Section 5.5(b) of the prior Plan described the standard that applied when a Player sought reclassification of a prior benefits decision:

Reclassification. A Player who becomes totally and permanently disabled and who satisfies the conditions of eligibility for benefits under Section 5.1(a), 5.1(b), 5.1(c), or 5.1(d) will be deemed to continue to be eligible only for the category of benefits for which he first qualifies, unless the Player shows by evidence found by the Retirement Board or the Disability Initial Claims Committee to be clear and convincing that, because of changed circumstances, the Player satisfies the conditions of eligibility for a benefit under a different category of total and permanent disability benefits. A Player's total and permanent disability benefit will not be reclassified or otherwise increased with respect to any month or other period of time that precedes by more than forty-two months the date the Retirement Board receives a written application or similar letter requesting such reclassification or increase that begins the administrative process that results in the award of the benefit. This forty-two month limitation period will be tolled for any period of time during which such Player is found by the Retirement Board or the Disability Initial Claims Committee to be physically or mentally incapacitated in a manner that substantially interferes with the filing of such claim.

### Discussion

You applied for Football Degenerative benefits in 2001. On October 18, 2001, the Retirement Board found that you were totally and permanently disabled due to a seizure disorder, and it awarded you Football Degenerative T&P benefits with an effective date of March 1, 2001. You did not appeal that decision, and so it became a final decision with respect to your benefits.

On May 15, 2015, your representative, Stephanie Anderson, submitted a request for "review of the classification" decision from October 2001. In sum, Ms. Anderson argues that you were an Active Player when your seizures occurred, and those seizures effectively ended your professional football career. Ms. Anderson also requests a retroactive lump sum payment of \$1,748,333.00.

The Committee treated Ms. Anderson's letter as a request for reclassification of benefits. In a letter dated June 29, 2015, the Committee denied that request after concluding that you failed to present clear and convincing evidence that you satisfied the requirements for Active Football T&P benefits due to changed circumstances.

In a letter dated October 16, 2015, Ms. Anderson appealed the Committee's decision to the Retirement Board and provided additional medical records in support of your appeal. In the appeal letter, Ms. Anderson states that you are entitled to Active Football benefits because your impairment(s) resulted from League football activities, they arose while you were an Active Player, and they rendered you totally and permanently disabled shortly after they first arose.

At its November 19, 2015 meeting, the Retirement Board considered your appeal and determined that it must be denied. The Retirement Board noted that you originally applied for Football Degenerative benefits in 2001—not Active Football benefits—and you were awarded those benefits in a final decision. Putting aside the fact that you received a fully favorable decision on your original application, if you had any disagreement with that decision you could have asked the Retirement Board to reconsider the decision, or you could have filed a civil action pursuant to Section 502(a) of ERISA. You did neither. Nearly 15 years have elapsed since the Retirement Board issued its decision. The terms of the Plan do not contemplate requests for "review" like the one Ms. Anderson submitted, and that decision is now final and not subject to review, even in court, under Plan Section 12.7(a). ("No suit or legal action with respect to an adverse determination maybe commenced more than forty-two months from the date of the final decision on the claim for benefits (including the decision on review)").

After reviewing your appeal, the Retirement Board determined that your request for reclassification does not meet the Plan's "changed circumstances" requirement. As noted above, you were originally awarded Football Degenerative benefits due to your seizure disorder. Your request for reclassification is unquestionably based upon the same condition, *i.e.*, your seizure disorder. It merely presents new arguments about the timing of that condition and your total and permanent disability. Because your

reclassification request does not present clear and convincing evidence of "changed circumstances," as required by Section 5.5(b), the Retirement Board concluded that it cannot reclassify your existing Football Degenerative benefits to the Active Football category.

Like the Committee, the Retirement Board construed Ms. Anderson's request for "review" as a request for reclassification of benefits, which is governed by Section 5.5(b) of the Plan (quoted above). Section 5.5(b) permits reclassification of benefits only where a Player provides "clear and convincing" evidence of "changed circumstances" warranting "a different category of total and permanent disability benefits." In this and all other instances, the Retirement Board interprets Section 5.5(b)'s "changed circumstances" requirement to mean a change in a Player's condition—such as a new or different impairment—that warrants a different category of benefits.

For these reasons, the Retirement Board denied your appeal.

#### **Appeal Rights**

You should regard this letter as a final decision on review within the meaning of section 503 of the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder by the Department of Labor. You are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. You have the right to bring an action under section 502(a) of the Employee Retirement Income Security Act of 1974, as amended, within 42 months from the date of this decision.

If you have any questions, please contact the Plan Office.

Sincerely,



Michael B. Miller  
Plan Director  
On behalf of the Retirement Board

MBM:prs

cc: Stephanie Anderson